

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 14-47825

ESTATE OF ANDREW J. McCRARY,

Chapter 13

Debtor.

Judge Thomas J. Tucker

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ORDER DISMISSING CASE

On May 5, 2014, Debra R. Miller, the Executor of the Estate of Andrew J. McCrary, who is not an attorney, filed a voluntary petition for relief under Chapter 13 on behalf of such estate. Andrew J. McCrary is deceased. (*See* Docket # 4 (“Oath of Executor”).) This case must be dismissed for two reasons.

First, an estate may not be a debtor under Chapter 13, because it is not “an individual.” *See* 11 U.S.C. § 109(e) (“Only an individual with regular income . . . may be a debtor under chapter 13 of this title.”); *In re Bunch*, 249 B.R. 667, 668, 671 (Bankr. D. Md. 2006)(holding that “a decedent’s estate is not eligible to file a Chapter 13 bankruptcy petition because it is not within the definition of an ‘individual’ as set forth in 11 U.S.C. § 109 for purposes of Chapter 13”); *In re Estate of Roberts*, No. 05-26653 ESD., 2005 WL 3108224, at *3 (Bankr. D. Md. 2005)(decedent's estate was not an “individual” and thus not eligible to file for relief under Chapter 13); Keith M. Lundin & William H. Brown, *Chapter 13 Bankruptcy*, 4th Edition, § 7.8 at ¶ 1, Sec. Rev. Mar. 4, 2009, www.Ch13online.com (footnote omitted)(“The estate of a deceased individual is not an individual with regular income and is not eligible for Chapter 13.”); *cf. In re JAC Family Foundation*, 356 B.R. 554, 757 (Bankr. N.D. Ga. 2006)(holding that a family foundation “is not eligible to be a debtor under Chapter 13 because a foundation is not an individual, and § 109(e) of the Bankruptcy Code limits Chapter 13 relief to individuals”).

“Individual” means “a single human being,” or “natural person,” not an estate or other entity. *See, e.g., In re JAC Family Foundation*, 356 B.R. at 556-57. In fact, a decedent’s estate is not eligible be a debtor under any chapter of the Bankruptcy Code. *In re Shepherd*, 490 B.R. 338, 342 (Bankr. N.D. Ind. 2013)(footnote omitted)(“[I]t is universally held that a probate estate may not be a debtor.”); *In re Estate of Roberts*, 2005 WL 3108224, at *3 (citations omitted)(explaining that “[o]ther courts addressing the question of whether an insolvent decedent's estate is a person and therefore eligible for relief under the Bankruptcy Code have uniformly found that the definition of debtor excludes insolvent decedents' estates” and holding that a decedent’s estate is not eligible for relief under the Bankruptcy Code because it is not a “person” and it is not an “individual”).

Second, the bankruptcy petition was not validly filed. A legal entity, such as an estate, must be represented by an attorney in a bankruptcy case. A representative of the estate, who is not herself an attorney, cannot file a bankruptcy petition on behalf of the estate, except through an attorney. *See, e.g., Beyer v. North Carolina Division of Mental Health*, No. 1:01CV50-T, 2001 WL 1319506, at * 1-2 (W.D.N.C. 2001)(comparing an estate to a corporation and holding that an estate cannot represent itself and that it must be represented by a licensed attorney); *cf. United States v. 9.19 Acres of Land*, 416 F.2d 1244, 1245 (6th Cir. 1969)(“[A] corporation cannot appear otherwise than through an attorney.”); *see also In re Dick Tracy Insurance Agency, Inc.*, 204 B.R. 39, 39 (Bankr. W.D. Mo. 1997)(“There is no dispute that a corporation must be represented by counsel in a bankruptcy proceeding and may not file a petition *pro se*.”)

For these reasons,

IT IS ORDERED that this case is dismissed.

Signed on May 09, 2014

/s/ Thomas J. Tucker

**Thomas J. Tucker
United States Bankruptcy Judge**